CLAIMS

I. General Discussion of the Differences Between Logan and the Instant Invention

The need for royalty owner rights reporting has been recognized since the early days of the recording industry and likewise since the early days of broadcast media (e.g. radio & television). Accordingly, it is not particularly novel for the Internet-based and related downloading technologies to apply strict reporting standards. Logan was essentially innovating dynamic program selection and not introducing any new model of royalty reporting. Were this not the case, then Logan would be a patent for two inventions.

Applicant respectfully submits that the differences between Logan and the instant invention were addressed in the Background Section of the instant application. Specifically, "calculating a royalty right for each use of a downloaded content" was cited as insufficient in the context of the increase in download bandwidth capacity. Particularly, "calculating a royalty right for each use of a downloaded content" is the model of Logan and others that have addressed royalty owner rights.

In contrast, the instant application focuses on a need in the art to "*substantially* preserve royalty owner rights" – which is to say in a less precise fashion than "for each use", because the content volumes involved do not justify the original level of full accuracy usage reporting.

II. Rejections Under 35 USC 102:

A. Claims 1-8, 10-14, and 20 – rejected as being anticipated by U.S. Patent # 6,199,076 to Logan:

There are at least three significant and fundamental differences between Logan and the invention as defined in independent Claim 1, its dependent Claims 2-15, and independent Claim 20. First, the instant application relates to "substantially asynchronous transaction steps" while Logan discloses a purely sequential task loop. Second, Logan does not disclose the "convolving of an updated metric of use". Third, Logan does not disclose "computing a quantification or predetermined contractual-based apportioning of royalty owner rights" from the convoluted database records. All these unique and nonobvious features of the instant invention are clearly defined in independent Claims 1 and 20, and are absent from Logan.

A further discussion of the above differences follows:

The instant application states on page 8, lines 4-6: "these respective metrics are used for proportional division of a collective royalty collected for the respective download..." Logan assumes that each user will report his use and then pay his respective royalty fees. The instant application preferably presumes that a user will pay his royalty fees at the time of purchase* and thereafter the holder of the collected fees will compute a statistical convolution of the reported sample of uses (which are collected from client who return to purchase additional materials). Using these samplings, the holder of the fees may begin to assign (and presumably transfer) proportional royalties to the owners. (*Alternatively, for the entire download, the user may pay periodic royalty by credit card – and may never happen-stantially return to the vendor to upload his usage data.)

The instant application presents at least seven clear examples of this distinction, which are detailed below:

(1) Page 10, lines 26-29: "When the vendor reaches the point in time when he must calculate royalties for the purpose of payment, he operates the software that extrapolates information from the database according to predefined parameters and calculates the royalties, which are to be paid. When the vendor reaches the point in time

when he must calculate royalties for the purpose of payment, he operates the software that extrapolates information from the database according to predefined parameters and calculates the royalties, which are to be paid. When the vendor reaches the point in time when he must calculate royalties for the purpose of payment, he operates the software that extrapolates information from the database according to predefined parameters and calculates the royalties, which are to be paid."; and

(2) Page 11, lines 6-10: "The software then aggregates these averages according to accepted statistical computation procedures and allocates a metric of royalty payment proportionality for each song in the collection of 25 songs. In contradistinction, were the user to have downloaded a song individually and not as part of a collection, then the entire royalty payment for that download would be forthcoming to the royalty owner."; and

(3) Page 13, lines 9-13: "Each time a user returns, the vendor's computer requests data about the use of the files on the user's computer during the past 30 days, and the user's computer uploads a data file to the vendor's computer. By the end of a year, 80% of the users who purchased the software package have returned, and of those, 25% have returned twice or more."; and

(4) Page 13, lines 20-24: "From the remaining data, the software calculates the average number of times each software program was used throughout the year and multiplies that average by the total number of packages that were sold, thus calculating the total use of the software program over the course of a year. Proportional metrics for royalties are then calculated accordingly."; and

(5) Page 14, lines 30-31 to page 15, lines 1-4: "After six months, the software on the vendor's computer analyzes the data regarding the use of the lectures. Based on the available data, a number representing the average use of each lecture is obtained and the

total use of each lecture by all of the customers is extrapolated from this number, based on the total sales of the program. The vendor is then able to pay royalties according to his contractual obligation."; and

(6) Page 19, lines 18-22: "With regard to royalties, a statistical analysis may include an analysis of file use by category such as age group or geographical location. Thus, upon receiving use reports from a portion of customers, the vendor is more accurately able to analyze and project the number of times similar or identical files were used by other customers."; and

(7) Page 20, lines 13-18: "...**computing** includes a predetermined contractual-based **apportioning** of royalty owner rights for reported use of respective materials by the user. In other words, the statistical information made available by the collection of data regarding use and the analysis of that data is used to determine the amount owed to the owner of royalty rights for the use of his product, in accordance with an existing contract."; etc.

B. **Claims 16-19 – rejected as being anticipated by U.S. Patent # 6,199,076 to Logan:**

Please cancel Claims 16-19.

III. Rejections Under 35 USC 103:

A. Claim 9 – rejected as being obvious versus U.S. Patent # 6,199,076 to Logan:

Claim 9 depends from independent Claim 1, and as shown above, there are at least three patentably distinct differences between Claim 1 and Logan. Thus, Claim 9 is also patentably distinct versus Logan.

B. Claim 15 – rejected as being obvious versus U.S. Patent # 6,199,076 to Logan, in view of U.S. Patent # 6,230,204 to Fleming:

As shown above, there are at least three patentably distinct differences between Claim 1 and Logan. Fleming does not disclose the above three differences either, and thus there are also three patentably distinct differences between Claim 1 and a combination of Logan and Fleming. Claim 15 depends from independent Claim 1; thus, Claim 15 is also patentably distinct versus a combination of Logan and Fleming.

Further, in Fleming, a predetermined sub-set of users are selected as representative of the entire user population. These users are monitored with respect to a specific resource. Per se, this is an interesting analytical tool, but not one that would be or has been incorporated by the ordinary man of the art to the domain of royalty owner rights distribution for downloaded packaged media collections – which is the context of the instant application. Furthermore, it is difficult to conceive of their synthesis in juxtaposition (Logan & Fleming) to any other known context. Said another way, Fleming solves a different problem than either Logan or the instant invention. This indicates that combining Logan and Fleming to meet the extrapolated proportioning element of Claim 15 would not be obvious. See *Wright, 6 USPQ 2d 1959 (1988).*

AUTHORIZATION OF AGENT

An authorization of agent naming the undersigned registered practitioner is attached, as well as a revocation of previous powers of attorney or authorizations of agent.

CONCLUSION

In view of these clarifications, Applicant respectfully requests that the Examiner withdraw his rejections based on Logan and Fleming. Applicant further submits that the claims are in proper form, and that the claims all define patentably over the prior art. Therefore Applicant submits that this application is now in condition for allowance, which action they respectfully solicit.

Very respectfully,

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Certificate of Fax Transmission: I certify that on the date below, this document and referenced attachments, if any, was faxed to the U.S. Patent Office at 703-305-7687.

6 May 2003

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